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Supreme Court of the United States.

October Term, 1902.

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JAMES H. McKENNEY,
Clerk.

No. 155.

JOHN E. SEXTON,

PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, DEFENDANT IN ERROR.

REPLY BRIEF

FOR PLAINTIFF IN ERROR.

JOHN E. SEXTON,
In Propria Persona.

Supreme Court of the United States.

October Term, 1902.

JOHN E. SEXTON,

PLAINTIFF IN ERROR,

VS.

THE PEOPLE OF THE STATE OF CALIFORNIA, DEFENDANT IN ERROR.

REPLY BRIEF OF PLAINTIFF IN ERROR.

This cause was called in the Court on the 28th day of January, A. D., 1903, and argued for Plaintiff in Error. There being no one present to argue said cause for Defendant in Error it was ordered that twenty days be allowed said Defendant in Error in which to file a brief, and that plaintiff have five days in which to reply thereto.

Argument.

I.

Defendant in Error has devoted the larger part of their brief to a discussion and presentation of law involving

the exercise of police power, over different subjects by the States.

To this we answer by saying that the State has a right through its Legislative bodies to enact laws, make all needful regulations for the promotion of domestic order, morals, health and safety, with one exception, and that is that it must not invade the domain of the National Government.

It, however, must be understood that the law or regulation referred to must be traced to the legislation of the sovereignty seeking to enforce it, and so far as the exercise of that power is concerned in relation to criminal procedure it cannot be extending by implication or enlarged by presumption.

We admit that the Constitution of the United States is a part of the organic law of every state, but acts of Congress enacted upon subjects expressly delegated to that body are not. Laws enacted by Congress are for the government and protection of another sovereignty.

The Defendant in Error offers no reason for the giving of extra-territorial effect to a strictly penal law of the United States.

It affirmatively appears from the face of the indictment in this case that the *basis of this cause of action* arises under a penal statute of the United States, to-wit: Section 3392, of the Revised Statutes of the United States.

Penal laws have no force of themselves beyond the

sovereignty that enacts them.

Wisconsin vs. Pelican Insurance Co., 127 U.S.265.
Huntington vs. Attrill, 146 U. S. 657.
Story on Conflict of Laws, Chapter XVI.

II.

It is contended, at page 13 of their brief, that the case of The People vs. Welch, 141, N. Y. 266, expresses the views of Defendant in Error in this case.

In that case the crime of which Welch was convicted was, I should assume from the language of the decision, defined by a statute of the State of New York, enacted prior to the enactment of Section 5328 of the Revised Statutes of the United States, while Section 518 of the Penal Code of California was passed long afterwards; and I quote from that decision the following:

"It is an accepted canon in the construction of powers "granted to the general government by the federal con- "stitution that state authority existing when the con- "stitution was adopted is not excluded by the mere grant "of similar powers to Congress."

III.

At page 13 of this brief Defendant in Error says:

"Second—But, we do not concede that the offense defined "by the California statute and the offense defined by the "Federal statute are one and the same offense."

At page 15 of their motion to dismiss or affirm this decision in this Court, Defendant in Error said:

"It is true that one of the provisions of subdivision 2 of "Section 519 contemplates the same offense contemplated "by Section 5484 of the Revised Statutes of the United "States, and that is all there is of Plaintiff's case."

There is no side of this question left for Plaintiff in Error to discuss, as Defendant has taken them both.

Allegans contraria non est audiendus.

IV.

To the second point of Defendant in Error. (Page 13 of brief.)

I submit that the language used in the indictment imputing a crime to Greenwald is purely a matter of pleading, as appears by the instructions of the trial Judge (folio 175, Transcript of Appeal to the Supreme Court of California) which is as follows:

"Now in order that the defendents should have been "guilty of making the threat above-mentioned, it is not "necessary that they should have employed the language "used in the indictment describing the crime, or is it nec- "essary that they should have named the crime in making "the threat and embodied in the threat all the particulars "and details which are contained in the legal definition "of the crime."

The evidence discloses the fact that neither the word

accuse or *inform* were used.

V.

At page 14 of the brief a reference is made to the case of The People vs. Sexton and The People vs. Hoffman, relating to the sufficiency of the indictment.

If the Indictment in this case was measured by the decision in the case of Hoffman it is defective, inasmuch as an indictment against Greenwald in the United States Court would not have been good unless it contained in addition to the pleading already quoted from Section 3392, Revised Statutes of the United States, the following words: ***with intent then and therein to defraud the United States of America.***

There could be no crime imputed to Greenwald unless it was alleged that he was charged with a violation of Section 3392, ***with intent to defraud the United States of America.***

Respectfully submitted,

JOHN E. SEXTON,
Plaintiff in Error.
In Propria Persona.